

**COUNTY OF SAN DIEGO**  
**INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN**

Effective July 1, 2000

**COUNTY OF SAN DIEGO**

**INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN**

**TABLE OF CONTENTS**

	<u>Page</u>
SECTION 1. ESTABLISHMENT AND PURPOSE OF THE PLAN.....	1
SECTION 2. ELIGIBILITY AND PARTICIPATION.....	1
(a) Eligibility.....	1
(b) Participation Upon Reemployment.....	2
(c) Participation Upon Transfer to Eligible Employee Status.....	2
(d) Suspension of Active Participation.....	2
(e) Termination of Participation .....	3
SECTION 3. MANDATORY EMPLOYEE CONTRIBUTIONS.....	3
(a) Amount of Mandatory Employee Contribution .....	3
(b) Withholding and Crediting to Accounts .....	3
SECTION 4. EMPLOYER CONTRIBUTIONS.....	4
(a) Employer Contributions.....	4
(b) Allocation of Employer Contributions.....	4
(c) Timing of Contributions.....	5
SECTION 5. ROLLOVER CONTRIBUTIONS AND TRANSFERS.....	5
(a) Rollover Contributions.....	5
(b) Direct Transfers .....	5
(c) Rollover Account.....	6
SECTION 6. INVESTMENTS AND INVESTMENT DIRECTIONS.....	6
(a) Fund .....	6
(b) Investment of Contributions.....	6
(c) California Government Code Section 53213.5 Requirements.....	7
(d) Investment of Account Balance of Terminated Participant .....	8
(e) The Fund; No Reversion .....	9
SECTION 7. ACCOUNTS, VALUATIONS AND STATEMENTS.....	9
(a) Accounts.....	9
(b) Valuation of Accounts .....	9
(c) Quarterly Statement .....	10

SECTION 8. VESTING OF PLAN BENEFITS.....	10
SECTION 9. FORM OF DISTRIBUTION OF PLAN BENEFITS TO PARTICIPANTS.....	10
(a) Forms Available .....	10
(b) Election of Form of Payment .....	10
(c) Effect of Failure to Elect a Form of Benefit.....	10
SECTION 10. TIME OF DISTRIBUTION OF PLAN BENEFITS.....	11
(a) Time of Distribution: General Rule .....	11
(b) Valuation of Plan Benefit.....	11
(c) Small Benefits .....	11
(d) Latest Time of Distribution .....	11
(e) Investment of Deferred Benefit or Unpaid Installments.....	12
(f) Employer Contributions Allocated After Prior Distribution.....	12
(g) Payments to Alternate Payees .....	12
(h) Direct Rollovers.....	14
SECTION 11. BENEFITS UPON DEATH.....	15
(a) Death While Employed.....	15
(b) Death Following Termination of Employment .....	15
(c) Form and Time of Commencement of Benefits to Beneficiaries.....	16
(d) Beneficiary Designations and Spousal Consent.....	16
SECTION 12. LOANS.....	17
(a) Amount of Loans .....	17
(b) Terms of Loans.....	18
(c) Disbursement of Loans .....	18
(d) Loan Fees .....	19
(e) Withholding and Application of Loan Payments .....	19
(f) Suspension of Repayments During an Unpaid Leave of Absence .....	19
(g) Default.....	20
SECTION 13. ADMINISTRATION OF THE PLAN.....	20
(a) Plan Sponsor and Administrator.....	20
(b) Administrative Responsibilities.....	20
(c) Management of Plan Assets .....	21
(d) Delegation of Fiduciary Responsibilities.....	21
(e) Service in Multiple Fiduciary Capacities.....	22
(f) Bonding.....	22
SECTION 14. PLAN EXPENSE AND BENEFIT PAYMENTS.....	22
(a) Expenses of the Plan .....	22
(b) Benefit Payments.....	22

SECTION 15. CLAIMS, INQUIRIES AND APPEALS.....	23
(a) Claims for Benefits and Inquiries .....	23
(b) Denial of Claims .....	23
SECTION 16. AMENDMENT AND TERMINATION OF THE PLAN.....	24
(a) Future of the Plan .....	24
(b) Amendments to the Plan .....	24
(c) Termination of the Plan.....	24
(d) Allocation of Fund on Plan Termination .....	25
SECTION 17. GENERAL PROVISIONS.....	25
(a) No Assignment of Property Rights.....	25
(b) Incompetence.....	25
(c) No Employment Rights.....	26
(d) Lost Participant or Beneficiary.....	26
(e) Choice of Law .....	26
SECTION 18. DEFINITIONS. ....	26
(a) “Accounts” .....	26
(b) “Alternate Payee” .....	26
(c) “Beneficiary” .....	26
(d) “Code” .....	27
(e) “Earnings” .....	27
(f) “Eligible Employee” .....	27
(g) “Employee” .....	28
(h) “Employee Account” .....	28
(i) “Employer” .....	28
(j) “Employer Account” .....	28
(k) “Employer Contributions” .....	28
(l) “Entry Date” .....	28
(m) “Fund” .....	28
(n) “Hour of Service” .....	28
(o) “Investment Option” .....	29
(p) “Mandatory Employee Contributions” .....	29
(q) “Normal Retirement Age” .....	29
(r) “Normal Retirement Date” .....	29
(s) “Participant” .....	29
(t) “Plan” .....	29
(u) “Plan Administrator” .....	29
(v) “Plan Benefit” .....	29
(w) “Plan Year” .....	29
(x) “Rollover Account” .....	29
(y) “Rollover Contribution” .....	29
(z) “Trustee” .....	30
(aa) “Valuation Date” .....	30

SECTION 19. EXECUTION.....	30
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## APPENDIX I

SECTION 1. DEFINITIONS .....	1
1.1   “Annual Additions” .....	1
1.2   “Section 415 Compensation” .....	1
SECTION 2. ALLOCATION LIMITATIONS.....	3
2.1   Limitation on Contributions .....	3
2.2   Excess Contributions .....	3

**COUNTY OF SAN DIEGO**  
**INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN**

**SECTION 1. ESTABLISHMENT AND PURPOSE OF THE PLAN.**

The County of San Diego (the “Employer”) hereby establishes the County of San Diego Incentive Retirement Deferred Compensation Plan, effective July 1, 2000. The Plan is intended to provide Eligible Employees with retirement benefits under a profit sharing plan qualified under section 401(a) and related sections of the Code. The Plan may be amended or terminated as provided in Section 16.

Certain capitalized terms used in the Plan text are defined in Section 18 in alphabetical order.

**SECTION 2. ELIGIBILITY AND PARTICIPATION.**

(a) Eligibility. Each Eligible Employee may become a Participant by making an election to contribute to the Plan pursuant to Section 3(a) within 90 days of the date the Employee completes one Hour of Service as an Eligible Employee. The Employee shall then enter the Plan on the next Entry Date. To enroll, the Eligible Employee must complete an enrollment form on which he or she agrees to make Mandatory Employee Contributions pursuant to Section 3(a), designate a Beneficiary and choose from among the Investment Options applicable to contributions made under the Plan.

(b) Participation Upon Reemployment. A reemployed Employee shall be a Participant upon reemployment, provided he or she then qualifies as an Eligible Employee. Any prior election made pursuant to Section 3(a) with respect to the percentage of contribution shall remain in effect upon reemployment.

(c) Participation Upon Transfer to Eligible Employee Status. An Employee who is ineligible to become a Participant solely because he or she is not an Eligible Employee on the date he or she would otherwise become a Participant under Section 2(a) may become a Participant on the Entry Date following the date the person elects to participate in the Plan (which election must be made within 90 days of the date the person becomes an Eligible Employee).

(d) Suspension of Active Participation. A Participant's active participation in the Plan shall be suspended for any period during which the Participant is an Employee but not an Eligible Employee, the Participant does not receive any Earnings, or ceases contributions in the case of hardship as provided in Section 3(a). A suspension in the case of hardship will be for a minimum of six months. A Participant shall not receive any allocation of Employer Contributions made or arising with respect to any such period. Such Participant's Accounts shall, however, continue to share in the income, gains and losses of the Fund.

(e) Termination of Participation. A Participant's participation in the Plan shall terminate as of the later of (i) the date he or she ceases to be an Employee or (ii) if the Participant is entitled to a Plan Benefit hereunder, the earlier of the date of the Participant's death or the date no further benefits are payable to the Participant hereunder.

### SECTION 3. MANDATORY EMPLOYEE CONTRIBUTIONS.

(a) Amount of Mandatory Employee Contribution. Each Eligible Employee, on a one-time basis through an irrevocable election, may make Mandatory Employee Contributions to the Plan of 2.5%, 5%, 10%, 15%, 20% or 25% (whichever he or she elects) of his or her Earnings. The election made pursuant to this paragraph shall be made within 90 days of the date an Eligible Employee first completes one Hour of Service, or when an Employee is not an Eligible Employee and transfers to Eligible Employee status, within 90 days of the date the Employee becomes an Eligible Employee. The election shall be irrevocable except to the extent of hardship (as determined by the Plan Administrator). Such election shall apply to all periods of employment with the Employer, including periods following reemployment with the Employer when a prior election had been made under this Plan.

(b) Withholding and Crediting to Accounts. Except to the extent the Employer "picks up" the contribution under the principles of Section 414(h) of the Code, Mandatory Employee Contributions made pursuant to Section 3(a) shall be withheld only through regular payroll deductions on an after-tax basis from the Participant's Earnings. Mandatory Employee Contributions shall be deposited with the Trustee as soon as practicable after they are withheld



and shall be credited to the respective Participants' separate Employee Accounts and invested as provided in Section 6.

#### SECTION 4. EMPLOYER CONTRIBUTIONS.

(a) Employer Contributions For each Plan Year the Employer will make Employer Contributions to the Plan equal to the sum of the amounts elected to be contributed by the Participants as Mandatory Employee Contributions for such Plan Year in accordance with the following sentence. The Employer Contribution with respect to any Participant shall equal the percentage of Mandatory Employee Contribution elected by the Participant under Section 3(a); provided, however, that such Employer Contribution shall not be made for any Plan Year in amounts which cannot be allocated to any Participant's Accounts by reason of the limitation described in Section 2 of Appendix I. All Mandatory Employee Contributions will be paid by the Employer, and as provided in Section 414(h) of the Code, in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as Employer Contributions. All Employer Contributions shall be invested in accordance with the provisions of Section 6 and shall be made in cash.

(b) Allocation of Employer Contributions. Subject to the limitations contained in the Plan, Employer Contributions available as of each pay period shall be allocated to the Employer Account of each Participant who made Mandatory Employee Contributions during such pay period.

Employer Contributions shall be allocated to each Participant in an amount equal to the contribution made for the Participant pursuant to Section 4(a).

(c) Timing of Contributions. The Employer Contributions shall be paid to the Trustee as soon as administratively possible following each pay period.

#### SECTION 5. ROLLOVER CONTRIBUTIONS AND TRANSFERS.

(a) Rollover Contributions. With the consent of the Plan Administrator, the Plan may receive Rollover Contributions on behalf of an Eligible Employee if the following conditions are satisfied:

- (i) The contribution is made entirely in the form of U.S. dollars; and
- (ii) The Eligible Employee demonstrates to the Plan Administrator's satisfaction that the contribution is a qualifying rollover contribution under section 402(c)(4), 403(a)(4) or 408(d)(3) of the Code.

(b) Direct Transfers. With the consent of the Plan Administrator, amounts may be transferred directly from other qualified plans by an Eligible Employee, provided the transfer will not jeopardize the tax exempt status of the Plan. No amount may be directly transferred to this Plan if such amount is subject to the joint and survivor annuity requirements of Section 417 of the Code.

(c) Rollover Account. Rollover Contributions and amounts directly transferred to this Plan shall be credited to the Eligible Employee's separate Rollover Account and shall be invested as provided in Section 6. The Eligible Employee's Rollover Account shall be 100% vested and nonforfeitable at all times.

#### SECTION 6. INVESTMENTS AND INVESTMENT DIRECTIONS.

(a) Fund. All contributions to the Plan shall be held by the Trustee for investment and reinvestment as part of the Fund. The Employer shall initially enter into a Trust Agreement with the San Diego County Treasurer to provide for the holding, investment and administration of the amounts contributed under the Plan, and the Fund shall be administered by the San Diego County Treasurer in accordance with the terms and provisions of the Trust Agreement and this Plan. The San Diego County Treasurer may appoint a different Trustee(s) as its successor(s) at any time.

(b) Investment of Contributions. A Participant may elect to have the contributions to his or her Employer Account, Employee Account and Rollover Account invested in one or more Investment Options designated by the Plan Administrator. A Participant shall direct the investment of such contributions among such Investment Options in accordance with procedures established by the Plan Administrator. A Participant's initial investment directions shall be filed with or as part of the Participant's enrollment form. A Participant may direct the reinvestment of existing balances credited to his or her Accounts, as well as change the Investment Options applicable to future contributions, in accordance with procedures established by the Plan Administrator.

(c) California Government Code Section 53213.5 Requirements. The Plan is intended to comply with California Government Code section 53213.5 which provides the Employer and Trustee relief from fiduciary liability in the event of investment losses where Participants have directed their investment choices. This relief is conditioned upon the Employer's compliance with the communication and education requirements similar to those prescribed in subdivision (c) of Section 1104 of Title 29 of the United States Code. Accordingly, the Plan must satisfy, among other requirements, Paragraphs (i), (ii) and (iii) below.

(i) Choice of Broad Range of Investment Alternatives. Participants must be able to choose from at least three investment alternatives. The three alternatives must constitute a broad range of choices ("core alternatives") which (A) are diversified, (B) demonstrate materially different risk and return characteristics, (C) in the aggregate, enable a Participant to achieve a portfolio with risk and return characteristics at any point within the range normally appropriate by choosing among the core alternatives, and (D) tend to minimize, through diversification and in combination with the other alternatives, the overall risk to the Participant's portfolio.

(ii) Frequency of Investment Instructions. The Participant must be able to give investment instructions to a person designated by the Plan Administrator as an agent for this purpose. The person is obligated to comply with the instructions of the Participant, except as permitted by law. The Participant must be able to give investment instructions for each investment alternative as frequently as is appropriate given the volatility of the investment, but no less frequently than once within every three-month period.

(iii) Provision of Sufficient Information to Participant or Beneficiary. The Participant or Beneficiary shall be provided information sufficient to make informed decisions

regarding the investment alternatives under the Plan. Such information shall (A) explain that the Plan is intended to be in compliance with California Government Code section 53213.5 and that Plan fiduciaries may be relieved of liability for losses that arise from the Participant's investment choices, (B) describe all investment alternatives, including a general description of the investment objectives of each alternative and the level of diversification in each alternative, (C) explain that Participants may review any prospectuses or similar materials made available to the Plan for each alternative, (D) identify any designated investment manager, (E) explain the circumstances under which a Participant may give investment instructions along with any limitations on those instructions, (F) describe any transaction fees, charges or expenses to a Participant's Accounts in connection with the purchase or sale of any investment alternative, (G) provide the name, address and telephone number of the Plan fiduciary responsible for providing information on request, with a description of such information available upon request, (H) provide a copy of the most recent prospectus in the case of an initial purchase of an alternative subject to the Securities Act of 1933, and (I) provide any materials provided to the Plan which relate to the exercise of voting, tender or similar rights passed through to Participants. Information which must be provided on request includes certain information relating to financial reports of investment alternatives, operating expenses of the alternatives, overall investment performance of the alternatives, and information relating to the shares of an investment in the requesting Participant's account. Additional information may be available upon request.

(d) Investment of Account Balance of Terminated Participant. In the event a Participant's employment with the Employer is terminated and the Participant elects to leave his or her Accounts in the Plan, such Accounts shall continue to be invested pursuant to the

provisions of this Section 6. In the event any investment alternative ceases to be offered as an investment alternative under the Plan, the portion of the Participant's Accounts invested in such fund shall be liquidated and reinvested in an available fund as directed by the Participant.

(e) The Fund; No Reversion. Except as provided in the following paragraph, the assets of the Plan shall be held for the exclusive purpose of providing benefits to Participants or their Beneficiaries and of defraying the reasonable expenses of administering the Plan.

In the case of an Employer Contribution that was made by virtue of a mistake of fact, this Section 6(e) shall not prohibit the return of such Employer Contribution to the Employer within 12 months after the payment thereof.

#### SECTION 7. ACCOUNTS, VALUATIONS AND STATEMENTS.

(a) Accounts. The following Accounts, as appropriate, shall be maintained for a Participant:

- (i) An Employer Account;
- (ii) An Employee Account; and
- (iii) A Rollover Account

(b) Valuation of Accounts. Each Account shall be revalued at fair market value and adjusted as of each Valuation Date to reflect the Participant's proportionate share of any realized or unrealized investment income, gains, losses and expenses of each Investment Option in which the Account was invested which have accrued since the preceding Valuation Date.

(c) Quarterly Statement. On at least a quarterly basis, there shall be prepared and delivered to each Participant a written statement showing the status of such Participant's Accounts, including the respective fair market values of such Accounts.

#### SECTION 8. VESTING OF PLAN BENEFITS.

Each Employee is 100% vested in the value of his or her Accounts at all times.

#### SECTION 9. FORM OF DISTRIBUTION OF PLAN BENEFITS TO PARTICIPANTS.

(a) Forms Available. A Participant may elect to have his or her Plan Benefit paid (1) in a lump sum cash payment or (2) in monthly installment payments to the Participant for a fixed period of time (not less than 60 months and no longer than the life expectancy of the Participant or the joint life expectancies of the Participant and Beneficiary), or in a combination of (1) and (2) above.

(b) Election of Form of Payment. A Participant may elect to have his or her Plan Benefit paid in either form described in Section 9(a) by filing the prescribed form(s) with the Plan Administrator within the 90-day period ending on the date benefits are to be paid. A Participant who has made an election pursuant to this Section 9(b) may change or revoke such election at any time, including a date after benefits have commenced under the Plan.

(c) Effect of Failure to Elect a Form of Benefit. If a Participant has not elected the form in which his or her Plan Benefit is to be paid by the date payment is to be made, payment will be made in the form of a lump sum payment.

## SECTION 10. TIME OF DISTRIBUTION OF PLAN BENEFITS.

(a) Time of Distribution: General Rule. Subject to Sections 10(c), (d) and (f), payment of the Plan Benefit of a Participant is payable as soon as practicable following the termination of his or her employment by the Employer. If any Plan Benefit is to be distributed before the Participant attains age 65, the Participant must consent in writing to the receipt of the distribution.

(b) Valuation of Plan Benefit. The Participant's Plan Benefit equals the value of the Participant's Accounts at the time when such Plan Benefit is paid. The value shall be determined as of a Valuation Date which precedes the date of distribution and which is administratively feasible.

(c) Small Benefits. Any other provision of the Plan notwithstanding, a Participant's Plan Benefit shall be distributed in a single cash payment as soon as reasonably practicable after the Participant ceases to be an Employee if the value of such Plan Benefit does not exceed \$5,000 on the date the Participant ceases to be an Employee (and did not exceed \$5,000 at the time of a prior distribution).

(d) Latest Time of Distribution. If a Participant fails to file a claim for benefits under Section 10(a), the Participant's Plan Benefit shall be distributed no later than the 60th day after the later of (i) the last day of the Plan Year in which the Participant's termination of employment occurs or (ii) the last day of the Plan Year in which the Participant attains age 65. Notwithstanding the foregoing, the failure of a Participant to consent to a distribution while a Plan Benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any Plan Benefit sufficient to satisfy this Section.



If a Participant remains employed by the Employer after attaining Normal Retirement Age, distribution of the Plan Benefit shall occur by April 1 of the calendar year following the later of (1) the calendar year in which the Employee attains age 70-1/2 or (2) the calendar year in which the Employee retires. All distributions under the Plan shall be made in accordance with the Income Tax Regulations under section 401(a)(9) of the Code, including Income Tax Regulations section 1.401(a)(9)-2 or its successor. Such regulations are incorporated in the Plan by reference and shall override any inconsistent provisions of the Plan.

(e) Investment of Deferred Benefit or Unpaid Installments. If distribution of a Participant's Plan Benefit is deferred or is payable in installments pursuant to this Section 10, the Participant's Accounts (to the extent not distributed) shall be retained in the Fund and held, valued and invested in the same manner as the Accounts of active Participants until fully distributed.

(f) Employer Contributions Allocated After Prior Distribution. Any Employer Contributions that are allocated to a former Participant after the former Participant has received his or her Plan Benefit shall be distributed to the former Participant as soon as practicable after such allocation.

(g) Payments to Alternate Payees

(i) Distributions. In the cases described below, any distribution to an Alternate Payee pursuant to a domestic relations order, including any interest in a Participant's Accounts awarded to an Alternate Payee by a domestic relations order, shall be made as soon as practicable after such order is determined by the Plan Administrator to be acceptable under the terms of the Plan:

(A) The value of such distribution (determined as of the date of distribution) does not exceed \$5,000;

(B) The domestic relations order has specified such time of distribution; or

(C) The Alternate Payee has consented in writing to such time of distribution.

(ii) Alternate Payee Accounts. If distributions are not made under Subsection (g)(i) above, any interest in a Participant's Accounts assigned or made payable or distributable to the Alternate Payee by the domestic relations order shall be transferred to a separate account (the "Alternate Payee Account") established for such Alternate Payee. If a single amount or a single percentage of the vested portion of such Participant's Accounts is assigned or made payable or distributable to the Alternate Payee by the domestic relations order, the transfers to the Alternate Payee Account shall be made pro rata from such Participant's Accounts. Alternate Payees may direct the investment of their Alternate Payee Accounts as provided in Section 6(b).

(iii) Beneficiary Designation Prohibited. Alternate Payees may not designate Beneficiaries. Upon the death of an Alternate Payee, the entire balance of the Alternate Payee Account shall be distributed to the Alternate Payee's estate.

(iv) Latest Time of Distribution. Distribution to an Alternate Payee of his or her Alternate Payee Account shall be made as of the date specified in the domestic relations order, or if earlier, the time described under Section 10 if the Alternate Payee so

elects. However, payment will be made no later than the date the Participant's Plan Benefit is distributed or commences to be distributed.

(h) Direct Rollovers

(i) The Direct Rollover Option. Notwithstanding any provision of the Plan that would limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(ii) Definitions.

(A) Definition of Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(B) Definition of Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an

annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(C) Definition of Distributee. A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse, former spouse or spouse who is the Alternate Payee under a domestic relations order are Distributees with regard to the interest of the spouse or former spouse.

(D) Definition of Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

#### SECTION 11. BENEFITS UPON DEATH.

(a) Death While Employed. If a Participant dies while he or she is employed by the Employer, his or her Beneficiary shall be entitled to a Plan Benefit equal to 100% of the value of the Participant's Accounts, determined as of a Valuation Date preceding the date of distribution and which is administratively feasible.

(b) Death Following Termination of Employment.

(i) Before Full Distribution. If a Participant dies after his or her employment by the Employer has terminated but before his or her Plan Benefit has commenced or been fully distributed, his or her Beneficiary shall be entitled to a Plan Benefit equal to the value of the Participant's Accounts as of a Valuation Date preceding the date of

distribution to the Beneficiary and which is administratively feasible. If the Plan Benefit has commenced in the form of installment payments, the remaining interest will be distributed to the Beneficiary at least as rapidly as under the method in effect before the Participant's death.

(ii) After Full Distribution. If a Participant dies after his or her employment by the Employer has terminated and after he or she has received a distribution of his or her entire Plan Benefit, no further amount shall be payable to any individual hereunder.

(c) Form and Time of Commencement of Benefits to Beneficiaries. The Plan Benefit payable to a Beneficiary under Section 11(a) or 11(b)(i) shall be payable in a single lump sum in cash not later than 12 months after the date of the Participant's death; except, however, if installment payments have begun they may continue to be paid in accordance with the method of payment in effect. However, if the Beneficiary is the deceased Participant's spouse, the spouse may elect to delay receipt of the Accounts to a date no later than December 31 of the year the Participant would have attained age 70-1/2.

(d) Beneficiary Designations and Spousal Consent. Upon commencement of participation, each Participant shall, by filing the prescribed form with the Plan Administrator, name a person or persons as the Beneficiary who will receive any distribution payable under the Plan in the event of the Participant's death. If the Participant has not named a Beneficiary or if none of the named Beneficiaries is living when any payment is to be made, then (i) the spouse of the deceased Participant shall be the Beneficiary or (ii) if the Participant has no spouse living at the time of such payment, the then living children of the deceased Participant shall be the Beneficiaries in equal shares or (iii) if the Participant has neither spouse nor children living at the time of such payment, the estate of the Participant shall be the Beneficiary. The Participant may

change the designation of a Beneficiary from time to time in accordance with procedures established by the Plan Administrator. Any designation of a Beneficiary (or an amendment or revocation thereof) shall be effective only if it is made in writing on the prescribed form and is received by the Plan Administrator prior to the Participant's death. Any other provision of this Section 11(d) notwithstanding, in the case of a married Participant, any designation of a person other than his or her spouse as a primary Beneficiary shall be valid only if the spouse consented to such designation. The spouse's consent shall be in writing, shall acknowledge the effect of the Participant's election, shall specify the non-spouse Beneficiary being designated (including any class of Beneficiaries or any contingent Beneficiaries) and shall be witnessed by a notary public. A consent, once given by a spouse, shall not be revocable by such spouse. Such consent shall not apply to any change in Beneficiary designation, unless the spouse's consent expressly permits changes in the Beneficiary designation without further consent. The spouse's consent shall not be required if (i) the Participant establishes to the Plan Administrator's satisfaction that there is no spouse or the spouse cannot be located or (ii) the Participant is legally separated or has been abandoned (within the meaning of applicable law) and has an appropriate court order, unless a domestic relations order provides otherwise. If the spouse is legally incompetent to give consent, the spouse's legal guardian (including the Participant) may give consent.

## SECTION 12. LOANS.

(a) Amount of Loans. A Participant who is not on an unpaid leave of absence and is an Eligible Employee may borrow an amount from his or her Accounts, subject to the following restrictions:

- (i) The amount of the loan shall not be less than \$1,000;

(ii) The amount of the loan shall not exceed the least of:

(A) \$50,000, less the highest outstanding principal balance of any loan to the Participant from this Plan or any other qualified plan maintained by the Employer during the 12-month period ending on the day before the new loan is to be made;

(B) 50% of the balance credited to all of the Participant's Accounts.

(iii) Only one loan to the Participant may be outstanding at any time.

(b) Terms of Loans. All loans shall be on such terms and conditions as the Plan Administrator may determine, provided that all loans shall:

(i) Be evidenced by a promissory note signed by the Participant and secured by the Participant's Accounts that fund the loan;

(ii) Be subject to a substantially level amortization schedule with payments to be made by payroll deduction whenever possible and by check when not possible; but in no event shall payment be made less frequently than quarterly;

(iii) Bear interest at a fixed rate equal to the prime rate published in The Wall Street Journal plus 2%, determined as of the date the loan is approved; and

(iv) Provide for repayment in full on or before the earlier of (I) five years after the date when the loan is made (or 10 years after the date the loan is made if the loan is used to acquire any dwelling which within a reasonable time is to be used as the Participant's primary residence) or (II) termination of employment.

(c) Disbursement of Loans. The amount of a Participant's loan shall be disbursed to the Participant from the Participant's Accounts as soon as reasonably practicable after the

Participant's loan application is processed by the Plan Administrator. The Participant's Accounts shall be liquidated as necessary to fund the loan in the following order:

- (i) Rollover Account;
- (ii) Employer Account; and
- (iii) Employee Account.

The liquidation of the applicable Accounts shall be pro rata among the Investment Funds in which such Accounts are invested unless the Participant otherwise directs in accordance with procedures established by the Plan Administrator.

(d) Loan Fees. The Participant will pay such fees as the Plan Administrator or its agent may impose in order to defray the cost of originating and administering loans from the Plan.

(e) Withholding and Application of Loan Payments. Principal and interest payments shall be made each pay period from the Participant's Earnings. Principal and interest payments shall be credited to the Participant's Accounts in the reverse order that each such Account funded the loan (the reverse of Section 12(c)) and shall be invested as provided in Section 6 as if such payments were current contributions.

(f) Suspension of Repayments During an Unpaid Leave of Absence. If a Participant with an outstanding loan goes on an unpaid leave of absence, loan repayments may be suspended during the leave for a period of up to one year. When the person returns from the leave, the Plan Administrator will increase the loan's remaining loan repayments to take into account the missed payments in a manner which will cause the loan to be repaid within five years of the date the loan was made (or 10 years if for a principal residence).



(g) Default. Any loss caused by the nonpayment or other default on a Participant's loan obligation shall be borne solely by the Participant's Accounts.

(i) Definition of Default. If a Participant fails to make full payment of principal or interest on any Plan loan when such payment is due, and if such failure continues for 30 days, then the Plan Administrator shall treat the loan as in default.

(ii) Suspension of Payments. Upon default, payments under a Participant's loan shall be suspended for a period not to exceed 60 days or until 30 days before the scheduled end of the loan term, whichever occurs first. If the Participant is unable to or does not resume payments and does not fully repay the outstanding loan before the expiration of the suspension period, then the Plan Administrator shall report the amount of principal in default to the Participant and the Internal Revenue Service on Form 1099-R (or its equivalent) as a deemed distribution and shall cause the Plan to realize on its security for the loan by actually distributing the Participant's promissory note to the Participant at such time as a distribution of the note is permissible under the Plan.

### SECTION 13. ADMINISTRATION OF THE PLAN.

(a) Plan Sponsor and Administrator. The Employer is the "plan sponsor" of the Plan. The San Diego County Treasurer is the "plan administrator" of the Plan who operates the Plan on a day-to-day basis.

(b) Administrative Responsibilities. The Plan Administrator is the named fiduciary which has the authority to control and manage the operation and administration of the Plan. The Plan Administrator shall make such rules, regulations and computations and shall take such other actions to administer the Plan as the Plan Administrator may deem appropriate. Such rules,

interpretations, computations and actions shall be final, conclusive and binding on all persons.

The Plan Administrator shall have sole discretion to interpret the terms of the Plan and to determine eligibility for benefits pursuant to the objective criteria set forth in the Plan. In administering the Plan, the Plan Administrator shall act in a nondiscriminatory manner to the extent required by section 401 and related sections of the Code and shall at all times discharge its duties with respect to the Plan in accordance with the applicable fiduciary standards under California state law.

(c) Management of Plan Assets. The Plan Administrator is the named fiduciary with respect to control over and management of the Plan's assets only to the extent that (i) after the initial appointment of Trustee by the Employer, it may appoint one or more Trustees to hold all assets of the Plan and may enter into an agreement with each Trustee it appoints, and (ii) it shall designate one or more Investment Options for the investment of Plan assets. After the initial appointment of Trustee, the San Diego County Treasurer shall have the sole responsibility and power to appoint and remove any Trustee managing assets of the Plan.

(d) Delegation of Fiduciary Responsibilities. The Plan Administrator may engage such attorneys, actuaries, accountants, consultants, investment advisors or other persons to render advice or to perform services with regard to its responsibilities under the Plan as it shall determine to be necessary or appropriate. The Plan Administrator may designate by written instrument signed by both parties one or more persons to carry out, where appropriate, fiduciary responsibilities of the Plan Administrator. The duties and responsibilities under the Plan of the Plan Administrator not delegated to other fiduciaries pursuant to the foregoing sentence shall be carried out by the agents of the Plan Administrator, acting on behalf of and in the name of the Plan Administrator in their capacities as agents and not as individual fiduciaries. Without

limiting the generality of the foregoing, the Plan Administrator shall designate the persons, groups of persons or committees who shall carry out the responsibilities of the Plan Administrator under the Plan as the agents of the Plan Administrator, and the Plan Administrator as principal shall be responsible for the acts of such agents.

(e) Service in Multiple Fiduciary Capacities. Nothing herein shall prohibit any person or group of persons from serving in more than one fiduciary capacity with respect to the Plan.

(f) Bonding. The Employer shall secure fidelity bonding for the fiduciaries of the Plan. The Employer shall indemnify the Plan Administrator and any employee of the Employer who acts at the direction of the Plan Administrator, against any personal liability or expense, except such liability or expense as may result from his own willful misconduct.

#### SECTION 14. PLAN EXPENSE AND BENEFIT PAYMENTS.

(a) Expenses of the Plan. All expenses of administering the Plan shall be paid out of the Fund, except for such expenses as are paid by the Employer. The Employer shall have complete and unfettered discretion to determine whether an expense of the Plan shall be paid out of the Fund or by the Employer, and the Employer's discretion and authority to direct the payment of expenses out of the Fund shall not be limited in any way by any prior decision or practice regarding payment of the expenses of the Plan.

(b) Benefit Payments. All benefits payable pursuant to the Plan shall be paid by the Trustee out of the Fund pursuant to the directions of the Plan Administrator and the terms of the agreement with the Trustee.

## SECTION 15. CLAIMS, INQUIRIES AND APPEALS.

(a) Claims for Benefits and Inquiries. All claims for benefits and all inquiries concerning the Plan, or concerning present or future rights to benefits under the Plan, shall be submitted in writing to the Plan Administrator. Applications for benefits must be made on the forms prescribed by the Plan Administrator and signed by the Participant or the Participant's Beneficiary, as applicable.

(b) Denial of Claims. In the event it is necessary to hold a hearing regarding any benefit determination, the Plan Administrator may appoint either one of its agents or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the Plan Administrator his proposed findings of fact and recommended decision. The proposed findings of fact and recommendations of the referee shall be served on the parties who shall have 10 days to submit written objections thereto which shall be incorporated in the record considered by the Plan Administrator.

Upon receiving the proposed findings of fact and the recommendations of the referee, the Plan Administrator may:

(i) Approve and adopt the proposed findings and the recommendations of the referee; or

(ii) Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon the receipt thereof the Plan Administrator shall take such action as in its opinion is indicated by such evidence; or

(iii) Refer the matter back with or without instructions to the referee for further proceedings; or

(iv) Set the matter for hearing before itself. At such hearing the Plan

Administrator shall hear and decide the matter as if it had not been referred to the referee.

#### SECTION 16. AMENDMENT AND TERMINATION OF THE PLAN.

(a) Future of the Plan. The Employer expects to continue the Plan indefinitely.

Future conditions, however, cannot be foreseen, and the Employer, through resolution of its duly authorized representatives, reserves the right to amend or terminate the Plan at any time.

(b) Amendments to the Plan. No amendment of the Plan shall (i) reduce the benefit of any Participant accrued under the Plan prior to the date the amendment is adopted, except to the extent that a reduction in accrued benefits may be permitted by the Code, or (ii) divert any part of the assets of the Plan to purposes other than the exclusive purposes of providing benefits to Participants and Beneficiaries who have an interest in the Plan and of defraying the reasonable expenses of administering the Plan and the Fund.

(c) Termination of the Plan. On termination or partial termination of the Plan, no part of the Fund shall revert to the Employer or be used for or diverted to purposes other than the exclusive purposes of providing benefits to affected Participants, surviving spouses and Beneficiaries who have an interest in the Plan and of defraying the reasonable expenses of administering the Plan and such termination. On termination of the Plan or on the complete discontinuance of Employer Contributions to the Plan, each affected Participant's Employer Account shall remain 100% vested and nonforfeitable. On termination of the Plan, the Trust shall continue until the Fund has been distributed as provided in Section 16(d). Any other provision hereof notwithstanding, the Employer shall have no obligation to continue making Employer Contributions to the Plan after its termination. After such termination neither the

Employer nor any other person shall have any liability or obligation to provide benefits hereunder in excess of the value of the Fund. Upon such termination, Participants and Beneficiaries shall obtain benefits solely from the Fund. In the event of a partial termination of the Plan, this Section 16(c) shall apply only with respect to the Participants and Beneficiaries who are affected by such partial termination.

(d) Allocation of Fund on Plan Termination. On termination or partial termination of the Plan, the Accounts of each Participant shall be distributed as provided in Sections 9 and 10.

#### SECTION 17. GENERAL PROVISIONS.

(a) No Assignment of Property Rights. The interest and property rights of any person in the Plan, in the Fund or in any distribution to be made under the Plan shall not be subject to option nor be assignable either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment or other creditor's process, and any act in violation of this Section 17(a) shall be void. The foregoing notwithstanding, the creation, assignment, or recognition of a right to all or a portion of a Participant's Plan Benefit pursuant to a state domestic relations order shall not constitute a violation of this Section 17(a), provided such order is determined by the Plan Administrator to be acceptable as provided under Section 10(g).

(b) Incompetence. If, in the opinion of the Employer, any person becomes unable to handle properly any amounts distributable under the Plan, the Employer may make any arrangement for distribution on such person's behalf that it determines will be beneficial to such person, including (without limitation) payment to such person's guardian, conservator, spouse or dependent.

(c) No Employment Rights. Nothing in the Plan shall be deemed to give any person any right to remain in the employ of the Employer or affect any right of the Employer to terminate a person's employment with or without cause, which right is hereby reserved.

(d) Lost Participant or Beneficiary. If the Plan Administrator is unable to locate a Participant or Beneficiary who is entitled to receive any property which constitutes all or part of a Plan Benefit, then such property shall be forfeited (on a date determined by the Plan Administrator and applied in a uniform manner to all Participants) and used to reduce subsequent Employer Contributions to the Plan. In the event that such Participant or Beneficiary thereafter makes a claim for such property prior to the date final distributions are made from the Fund following termination of the Plan, the Employer shall reinstate such property (without income, gains or other adjustment) by making a special contribution as soon as reasonably practicable after such claim is made. However, if any property which constitutes all or part of a Plan Benefit would have been lost by reason of escheat under applicable state law, then such property shall not be subject to reinstatement by the Employer.

(e) Choice of Law. The Plan and all rights hereunder shall be construed in accordance with the Code and, to the extent not preempted by the Code, the law of the State of California.

#### SECTION 18. DEFINITIONS.

(a) "Accounts" means, to the extent applicable to a Participant, one or more of the accounts listed in Section 7(a).

(b) "Alternate Payee" means a spouse or former spouse of a Participant.

(c) "Beneficiary" means the person or persons described in Section 11(d).

(d) “Code” means the Internal Revenue Code of 1986, as amended from time to time.

(e) “Earnings” means, for any Plan Year, an Employee’s total salary or wages paid to the Employee by the Employer, including overtime and bonuses, as reported on Form W-2, and shall also include amounts contributed under a “cafeteria plan” pursuant to Section 125 of the Code, if any, and amounts contributed by the Employer under this Plan which are “picked up” under principles of Section 414(h) of the Code. Earnings shall exclude all other amounts of deferred compensation (whether or not includable in the gross income of the Employee for federal income tax purposes).

The annual Earnings of each Participant taken into account under the Plan for any year shall not exceed \$170,000, as adjusted by the Commissioner of Internal Revenue to reflect increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code.

(f) “Eligible Employee” means any Employee classified as either a permanent full-time employee or a permanent part-time employee by the Employer. However, the following classifications of Employees shall not be eligible:

(i) An Employee who is a nonresident alien with respect to the United States and who derives no earned income with a United States source from the Employer;

(ii) Any “leased employee” (within the meaning of section 414(n) of the Code) who is providing services to the Employer;

(iii) Not classified by the Employer as an Employee (but, for example, is classified as an independent contractor) even if such individual is later determined to be an Employee; and



(iv) Subject to a written agreement that provides that such individual shall not be eligible to participate in the Plan.

An individual's status as an Eligible Employee shall be determined by the Plan Administrator, and such determination shall be conclusive and binding on all persons. If, during any period, the Plan Administrator has not treated an individual as an Employee and, for that reason, employment taxes have not been withheld with respect to that individual, then that individual shall not be an Eligible Employee for that period, even in the event that the individual is determined, retroactively, to have been an Employee during all or any portion of that period.

(g) "Employee" means any individual who is employed by the Employer as a common-law employee.

(h) "Employee Account" means the separate account maintained for each Participant to which are credited the Participant's Mandatory Employee Contributions.

(i) "Employer" means the County of San Diego.

(j) "Employer Account" means the separate account maintained for each Participant to which is credited the Participant's share of Employer Contributions described in Section 4.

(k) "Employer Contributions" means contributions made by the Employer described in Section 4.

(l) "Entry Date" means the first day of each pay period.

(m) "Fund" means the total of all assets held by the Trustee pursuant to the Plan for the benefit of Participants and their Beneficiaries.

(n) "Hour of Service" means each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of services.

- (o) “Investment Option” means any investment vehicle designated by the Plan Administrator.
- (p) “Mandatory Employee Contributions” means contributions made by a Participant pursuant to Section 3(a).
- (q) “Normal Retirement Age” means age 65.
- (r) “Normal Retirement Date” means the first day of the month coinciding with or next following the date the Participant attains Normal Retirement Age.
- (s) “Participant” means an individual who is or was an Eligible Employee and who participates in the Plan.
- (t) “Plan” means the County of San Diego Incentive Retirement Deferred Compensation Plan, as set forth herein and as amended from time to time.
- (u) “Plan Administrator” means the San Diego County Treasurer or its delegate.
- (v) “Plan Benefit” means the amount distributable to a Participant pursuant to Section 9.
- (w) “Plan Year” means, for the first Plan Year, the period from July 1, 2000 to December 31, 2000; and beginning January 1, 2001, each calendar year.
- (x) “Rollover Account” means the separate account maintained for each Eligible Employee who makes a Rollover Contribution as described in Section 5.
- (y) “Rollover Contribution” means a rollover contribution made by an Eligible Employee pursuant to Section 5.

(z) “Trustee” means, effective July 1, 2000, the San Diego County Treasurer; and thereafter, at the discretion of the San Diego County Treasurer, any successor trustee(s) appointed by the San Diego County Treasurer pursuant to Section 13(c).

(aa) “Valuation Date” means each day on which the New York Stock Exchange is open for business.

SECTION 19. EXECUTION.

To record the adoption of the Plan to read as set forth herein, effective as of July 1, 2000, the Employer has caused its authorized officers to execute the same this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

COUNTY OF SAN DIEGO

By:\_\_\_\_\_

Title:\_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

**APPENDIX I**  
**LIMITATIONS ON CONTRIBUTIONS**

**SECTION 1. DEFINITIONS**

- 1.1 “Annual Additions” means, for any Plan Year, the sum of the following:
- (a) The aggregate after-tax employee contributions that the Participant contributes during such year to all qualified retirement plans maintained by the Employer;
  - (b) The amount of Employer Contributions allocated to the Participant’s Employer Account under this Plan as of any date within such year; and
  - (c) The amount of employer contributions and forfeitures allocated to the Participant under any qualified defined contribution plan that may be maintained by the Employer, other than this Plan, as of any date within such year.
- 1.2 “Section 415 Compensation” means any one of the definitions of compensation described in Subsections (a), (b), (c) or (d) below received by an Employee from the Employer. Any definition of Section 415 Compensation shall be used consistently to define the compensation of all Employees taken into account in satisfying the requirements of an applicable provision of this Appendix I for the relevant determination period.
- “Section 415 Compensation” means any one of the following definitions of compensation received by an Employee from the Employer:
- (a) Compensation as defined in Treasury Regulation section 1.415-2(d) or any successor thereto;

- (b) “Wages” as defined in section 3401(a) of the Code for purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(23) of the Code);
- (c) “Wages” as defined in section 3401(a) of the Code for purposes of income tax withholding at the source, plus all other payments of compensation reportable under Code sections 6041(d) and 6051(a)(3) and the regulations thereunder, determined without regard to any rules that limit such Wages or reportable compensation based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(23) of the Code), and modified, at the election of the Employer, to exclude amounts paid or reimbursed for the Employee’s moving expenses, to the extent it is reasonable to believe that these amounts are deductible by the Employee under section 217 of the Code; or
- (d) Any of the definitions of Section 415 Compensation set forth in Subsections (a), (b) and (c) above, reduced by all of the following items (even if includable in gross income): reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

Each of the definitions of Section 415 Compensation set forth in Subsections (a), (b), (c) and (d) above shall include any elective contributions made by the Employer on behalf of the

Employee that are not includable in gross income under section 125, 402(a)(8), 402(h) or 403(b) of the Code.

## SECTION 2. ALLOCATION LIMITATIONS.

2.1 Limitation on Contributions. The Annual Additions allocated to a Participant for any Plan Year shall not exceed the lesser of the following:

- (a) \$30,000, as adjusted by section 415(d) of the Code; or
- (b) 25% of the Participant's Section 415 Compensation for such year.

If a Participant's Annual Additions would exceed the foregoing limitation, then such Annual Additions shall be reduced by reducing the components thereof in the order in which they are listed in Section 1.1 of this Appendix I. If after all reductions are taken from the Accounts listed in Section 1.1 of this Appendix I, excess Annual Additions shall be reduced as provided in Section 2.3 below.

2.2 Excess Contributions If as a result of a reasonable error in estimating a Participant's 415 Compensation or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applied, and the limitations of Section 415 of the Code are not satisfied, the amount of Employer Contributions and/or Mandatory Employee Contributions allocated to a Participant for any Plan Year must be reduced to meet the limitation described in Section 2.1 of this Appendix I. If the amount that the Employer may contribute is thereby reduced to zero and if there are Employer Contributions that still cannot be allocated to any Participant because of the limitation described in Section 2.1 of this Appendix I, then the excess shall be transferred to a suspense account. (Mandatory Employee Contributions must be returned to the applicable Participant). Any gains, income or

losses attributable to the suspense account shall be allocated to such account. All amounts credited to the suspense account shall be applied to reduce the total amount that the Employer otherwise would contribute to the Plan for the next Plan Year, and for succeeding Plan Years if necessary. Such amounts shall be allocated among Participants pursuant to Section 4(b) of the Plan until the suspense account is exhausted (subject to this Section 2). No Employer Contributions shall be made as long as any amount remains in the suspense account. The suspense account shall be invested in an Investment Option designated by the Plan Administrator.